

SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

No. D-0202-CV-2010-14806

DANIEL and ANITA DELGADO,
individually and as next of friend of
S. and G. DELGADO

Plaintiffs,

v.

THE ESTATE OF ERNEST CHAVEZ
and GENUINE PARTS COMPANY

Defendants.

NOTICE AND RECEIPT OF SUMMONS AND COMPLAINT

TO: The Estate of Ernest Chavez
c/o Matthew Chavez, Personal Representative
c/o Michael C. Ross
505 Roma Ave. NW
Albuquerque, NM 87102-2124

The enclosed Summons and Complaint are served pursuant to Paragraph E of Rule 1-004 of the New Mexico Rules of Civil Procedure.

You must sign and date the receipt. If you are served on behalf of a corporation, unincorporated association (including a partnership) or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your position or title.

If you do not complete and return the form to the sender within twenty (20) days of the date served upon you, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

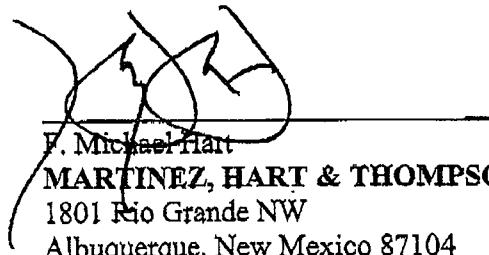
EXHIBIT

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If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within thirty (30) days of the date upon which this notice was mailed, which appears below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Receipt of Summons and Complaint was mailed on February 2, 2011.



RECEIPT OF SUMMONS AND COMPLAINT

I received a copy of the Summons and Complaint in the above-captioned matter

at _____
Address

DATE

SIGNATURE

Relationship to Entity/Authority to
Receive Service of Process

SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

DANIEL and ANITA DELGADO,
individually and as next of friend of
E. and G. DELGADO, minor children

Plaintiffs,
v.

No. ~~CV 2010-148-06~~

THE ESTATE OF ERNEST CHAVEZ
and GENUINE PARTS COMPANY

Defendants.

SUMMONS
THE STATE OF NEW MEXICO

TO: The Estate of Ernest Chavez
c/o Matthew Chavez, Personal Representative
c/o Michael C. Ross
505 Roma Ave. NW
Albuquerque, NM 87102-2124

You are required to serve upon Plaintiffs an answer or motion in response to the Complaint which is attached to this Summons thirty (30) days after service of this Summons upon you, exclusive of the day of service, and file a copy of your answer or motion with the court as provided in Rule 1-005 NMRA.

If you fail to file a timely answer or motion, default judgment may be entered against you for the relief demanded in the Complaint.

Attorney or attorneys for plaintiffs:

F. Michael Hart
Martinez, Hart & Thompson, P.C.
1801 Rio Grande Blvd. NW
Albuquerque, NM 87104 (505) 343-1776

NAN G. NASH

WITNESS the Honorable _____, District Judge of the
Second Judicial District Court of the State of New Mexico, and the seal of the District Court of
Bernalillo County, on _____

DEC 28 2010

JUANITA M. DURAN
CLERK OF THE DISTRICT COURT

RENDRA GOERS

By _____
Deputy

SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

No. CV 2010148 06

DANIEL and ANITA DELGADO,
individually and as next of friend of
E. and G. DELGADO, minor children

ENDORSED
FILED IN MY OFFICE THIS
DEC 28 2010
SHERIFF'S DEPT.
CLERK DISTRICT COURT

Plaintiffs,

v.

THE ESTATE OF ERNEST CHAVEZ
and GENUINE PARTS COMPANY

Defendants.

COMPLAINT FOR NEGLIGENCE

COME NOW, Plaintiffs Daniel and Anita Delgado, individually and as next of friends of E. and G. Delgado by and through their attorneys of record, MARTINEZ, HART & THOMPSON, P.C. (F. Michael Hart) and for their Complaint against Defendants state:

JURISDICTION AND VENUE

1. Plaintiffs are residents of Bernalillo County, New Mexico.
2. Upon information and belief, Defendant Ernest Chavez was a resident of Bernalillo County, New Mexico.
3. Defendant Genuine Parts Company is a Georgia Corporation that is registered to do business in New Mexico. Upon information and belief, Defendant Genuine Parts Company has a registered agent in New Mexico and the corporation's principal address in New Mexico is 1510 2nd Street NW, Albuquerque, New Mexico 87102.

4. All events alleged in this Complaint occurred in Bernalillo County, New Mexico.
5. Jurisdiction and venue are proper with this Court.

GENERAL ALLEGATIONS

6. On April 4, 2009 Daniel Delgado was driving his wife, Anita, and their two small children, E. and G., south on the Frontage Road.

7. At or about the same time, Ernest Chavez was driving a NAPA Auto Parts truck eastbound on the Frontage Road.

8. Upon information and belief, at all times material to this lawsuit, Defendant Genuine Parts Company was the owner of the NAPA Auto Parts business that Ernest Chavez worked for in Albuquerque, New Mexico and owned the vehicle Ernest Chavez was driving at the time of the accident at issue in this Complaint.

9. The eastbound Frontage Road was straight and had no elevation or grade changes to make it difficult to see ahead.

10. At the intersection of the south and east Frontage Roads, Ernest Chavez failed to yield to the red light for traffic going in his direction, and crashed into Daniel, Anita, E. and G.

11. Ernest Chavez died at the scene of the accident as a result of the injuries he sustained by the crash.

12. The Albuquerque Police Department's report concluded that Daniel Delgado did not contribute in any way to the crash and that Ernest Chavez was at fault as a result of running the red light.

COUNT I - NEGLIGENCE OF ERNEST CHAVEZ

13. All paragraphs are incorporated by reference herein.

14. Ernest Chavez owed Plaintiffs a duty to exercise ordinary care in operating his vehicle, at all times, to prevent an accident.

15. Ernest Chavez also owed Plaintiffs a duty to keep a proper lookout so as to avoid placing others in danger and to prevent an accident.

16. Ernest Chavez breached this duty when he failed to yield the right of way and ran the red light.

17. As a direct and proximate result of Ernest Chavez' negligence, Plaintiffs Daniel, Anita, E. and G. have suffered damages.

COUNT II - NEGLIGENCE PER SE

18. All paragraphs are incorporated by reference herein.

19. At all times relevant to this lawsuit there were New Mexico statutes and ordinances that govern and regulate appropriate conduct while operating a vehicle.

20. Ernest Chavez violated such statutes and ordinances.

21. As a direct and proximate result of Ernest Chavez' violation of statutes and ordinances specifically designed to protect drivers on New Mexico's roads and highways, Plaintiffs Daniel, Anita, E. and G. have suffered damages.

COUNT III - RESPONDEAT SUPERIOR

22. All paragraphs are incorporated by reference herein.

23. At all times relevant to this lawsuit, Ernest Chavez was an authorized agent of and was conducting business for Defendant Genuine Parts Company.

24. Defendant Genuine Parts Company derived benefit from the agency arrangement with Ernest Chavez and Defendant Genuine Parts Company.

25. Defendant Genuine Parts Company is vicariously liable for the injuries caused by its agent, Ernest Chavez.

WHEREFORE, Plaintiffs pray the Court find in their favor, individually and on behalf of their minor children, and against Defendants in an amount sufficient to compensate for all damages and injuries suffered, for all costs, pre judgment and post judgment interest, and other relief deemed to be appropriate and proper under the circumstances.

Respectfully submitted,

MARTINEZ, HART & THOMPSON, PC.



For

F. Michael Hart
Attorney for Plaintiffs
1801 Rio Grande Blvd. NW
Albuquerque, NM 87104
(505) 343-1776
(505) 344-7709 facsimile

FILED IN MY OFFICE THIS

DEC 28 2010

SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

CV 2010146 06

SHERIFF'S OFFICE
CLERK DISTRICT COURT

No. _____

DANIEL and ANITA DELGADO,
individually and as next of friend of
E. and G. DELGADO, minor children

Plaintiffs,

v.

THE ESTATE OF ERNEST CHAVEZ
and GENUINE PARTS COMPANY

Defendants.

DEMAND FOR TRIAL BY JURY

COME NOW Plaintiffs Daniel and Anita Delgado, individually and as next of friend of E. and G. Delgado, minor children, by and through their attorneys, MARTINEZ, HART & THOMPSON, P.C., by F. Michael Hart, and demands a trial by a six (6) person jury of all factual issues herein. In accordance with our demand, we herewith deposit the sum of \$150.00 with the Clerk of the District Court, pursuant to statute.

Respectfully Submitted,

MARTINEZ, HART & THOMPSON, P.C.


F. Michael Hart

Attorney for Plaintiffs
1801 Rio Grande Blvd. NW
Albuquerque, NM 87104
(505) 343-1776
(505) 344-7709 facsimile

ENDORSED
FILED IN MY OFFICE THIS

SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

DEC 28 2010

No. CV 2010148 06

CLERK DISTRICT COURT

DANIEL and ANITA DELGADO,
individually and as next of friend of
E. and G. DELGADO, minor children

Plaintiffs,

v.

THE ESTATE OF ERNEST CHAVEZ
and GENUINE PARTS COMPANY

Defendants.

PLAINTIFF'S CERTIFICATION
REGARDING ARBITRATION UNDER LOCAL RULE 2-603

COME NOW, the Plaintiffs Daniel and Anita Delgado, individually and as next of friend of E. and G. Delgado, minor children, by and through their attorneys of record, MARTINEZ, HART & THOMPSON, P.C. (F. Michael Hart) and hereby certifies that this case is not subject to referral to arbitration under Local Rule 2-603. At least one party seeks relief other than a money judgment and/or at least one party seeks an award in excess of \$25,000.00 exclusive of punitive damages and exclusive of interest, costs and attorneys' fees.

Respectfully submitted,

MARTINEZ, HART & THOMPSON, P.C.

For F. Michael Hart
F. Michael Hart
Attorney for Plaintiffs
1801 Rio Grande Blvd. NW
Albuquerque, NM 87104
Telephone: (505) 343-1776
Facsimile: (505) 344-7709